

NTSB Order No. EA-5011

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of December, 2002

MARION C. BLAKEY,
Administrator,
Federal Aviation Administration,

Complainant,

v.

DAVID JOSEPH DONNELLY,

Respondent.

Both respondent and the Administrator have appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on July 9, 2001, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator revoking respondent's airman certificates, on finding that respondent had violated 49 U.S.C. 44710(b)(2).² For the reasons

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below, the appeals are dismissed.

Respondent was a Federal Express pilot. He flew as a passenger on Northwest Airlines to Japan. Japanese Customs searched him and found six tablets in a film canister. The Japanese determined that the tablets were "MDMA," otherwise known as Ecstasy. He was convicted of violating the Japanese Narcotics and Psychotropics Control Law. His sentence was suspended and he was deported to the United States.

The law judge affirmed the Administrator's complaint, but reduced the sanction from the essentially permanent revocation called for under 49 U.S.C. 44710 to, in effect, a revocation of 18 months under 49 U.S.C. 44709. The respondent raises numerous arguments in support of his view that the Administrator's action should not be upheld in the circumstances presented, and the Administrator argues that the law judge erred in modifying the sanction she ordered. On consideration of the issues presented in the parties' briefs, the Board finds itself unable to reach a majority decision on either appeal.³ The initial decision will thus become the law of the case, without binding effect on the Board in future proceedings. See Rule 43, 49 C.F.R. § 821.43.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal and the respondent's appeal are dismissed;
2. The initial decision shall become final on service of this order; and
3. The revocation of respondent's certificates shall begin 30 days after the service date indicated on this order.⁴

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

(continued...)

activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

³Acting Chairman Carmody and Member Goglia would deny the Administrator's appeal and grant the respondent's, and Members Hammerschmidt and Black would deny the respondent's appeal and grant the Administrator's.

⁴For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).